THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.2020 of 2005

Date of Decision: 26 - 9 – 2006

Vijay Bhatia **.....Petitioner**

v.

Jagdish Parshad Goenka and another **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Suveer Sehgal, Advocate
for the petitioner.

Mr.Puneet Sharma, Advocate
for the respondent.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed against order dated 12.1.2005 vide which application filed by the plaintiff was allowed and the learned trial Court held that since defendant No.1 had failed to file the written statement within the stipulated period under Order VIII Rule 10 CPC, the defence of defendant No.1 was struck off.

Learned counsel for the petitioner, defendant No.1 in the suit, submits that he had been served in the suit and had appeared on 10.10.2002. Thereafter the proceedings in the suit were adjourned from time to time for service of defendant No.2. On 4.6.2003 defendant No.2 appeared and the case was fixed for 25.7.2003 for filing of written statement. On that date, the petitioner filed the written statement which was taken on record and the case was then adjourned to 11.8.2003 for filing of replication by the plaintiff. It was thereafter the application filed by the plaintiff for striking off the defence of the petitioner as he had not filed

the written statement within 90 days was allowed.

Learned counsel for the petitioner submits that since the written statement had already been taken on record, the defence should not have been struck off by the impugned order. He further submits that now it is settled by the Hon'ble Supreme Court in **Salem Advocate Bar Association v. Union of India**, AIR 2005 SC 3533 that the period of 90 days for filing of written statement is not mandatory and the Court can extend the time in appropriate cases. In a later judgment of the Hon'ble Supreme Court in **Shaikh Salim Haji Abdul Khayumsab v. Kumar and others**, (2006)1 SCC 46 the aforementioned proposition has again been reiterated. He therefore submits that the judgment of this Court relied upon by the trial Court are no longer a good law.

On the other hand, learned counsel for the respondent-plaintiff submits that the application for striking off the defence of defendant No.1 was filed earlier than the date when the written statement was allowed to be placed on record. He submits that in these circumstances first the application should have been decided and only thereafter the Court should have passed an order allowing or dis-allowing the written statement. He, however, submits that since the defendant had not filed the written statement within the stipulated period of 90 days, the same cannot be allowed to be taken on record.

After hearing learned counsel for the parties, I find that in the facts of this case the order dated 12.1.2005 cannot be sustained. Learned counsel for the petitioner is right in submitting that the Hon'ble Supreme Court in the aforementioned two judgments has taken the view that the period of 90 days for filing the written statement is not mandatory. In fact in the subsequent judgment in **Shaikh Salim Haji Abdul Khayumsab's case (supra)** the Hon'ble Supreme Court has observed as hereunder:-

> *"Order 8 Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the*

court and also does not specifically take away the power of the court to take the written statement on record through filed beyond the time as provided for. Further, the nature of the provision contained in Order 8 Rule 1 is procedural. It is not a part of the substantive law. Substituted Order 8 Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases, causing inconvenience to the plaintiffs and the petitioners approaching the court for quick relief and also the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice."

The Court concluded that the period of 90 days is not mandatory. Moreover, once the written statement had already been permitted to be placed on record, defendant No.1 should have been allowed to lead his defence.

For the reasons aforementioned, the revision petition is allowed. Order dated 12.1.2005 is set aside. Written statement filed by defendant No.1 shall be permitted to be placed on record. This shall, however, be subject to payment of costs which are assessed at Rs.2,500/-.

(P.S.PATWALIA)

September 26, 2006. **JUDGE**

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